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Why Congress Should Pass the Bill to Reimburse the Washington Estate, at this Session

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Ohio State Archaeological and Historical Society

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WHY CONGRESS SHOULD PASS THE BILL TO REIMBURSE THE WASHINGTON ESTATE, AT THIS SESSION.

This bill calling for $305,100 was presented to the 60th Congress on December 5, 1907, and nothing was done with it at that Congress, at the long session. It was put over to the short session on the plea that the appropriations must be kept down before the Presidential election.

At the short session of the 60th Congress, the sub-committee of the House Committee on Claims, acknowledged the justice of this claim by offering to satisfy it in land, but the full committee made no investigation or report.

The bills were reintroduced into the House and Senate in the 61st Congress and now it is suggested in the House that the bill should go over on account of the exigencies of the party in power, and the Congressional elections in the fall of this year. If the bill can be postponed for this reason, it can be postponed at every long session for the same reason. The heirs of General Washington claim this is a debt of the United States to them and say frankly if it is a debt, they are entitled to immediate payment and if not a debt, they have no claim. This debt originated on March 1, 1784. It was assumed in the first clause of Art. VI of the original Federal Constitution and reassumed in Sect. 4, of the 14th amendment and is a debt of perpetual obligation.

The United States gratefully and thankfully received from General Washington the relinquishment of his pay as General, tendered him by the Continental Congress, to the amount of $48,000. It received from him in his relinquishment of his bounty lands from Virginia, 23,333.33 acres of the value of $233,333.33. Thus the United States received gifts from General Washington of the value of $281,333, or 53 per centum of the estate of which he died seized.

This act of patriotism on the part of General Washington in contributing $281,333.33 to the Treasury of his country, has never, in my reading, been noticed or commented upon. How many patriotic citizens of this republic have contributed amounts equal to 53 per centum of their private fortunes to the Public Treasury of their Country? Let them be named and it will be found that this gift is unique and stands alone.

General Washington owned two warrants which were locatable in the North-west Territory. These he had purchased with his own means. One was for 3,000 acres purchased of Capt. John Rootes and the other was for 100 acres purchased of Thomas Cope. These he placed in the hands of Col. John O'Bannon, of Richmond, Va., and had them located in Clermont and Hamilton Counties, Ohio, in three surveys of 839, 1235 and 977 acres respectively. These surveys exhausted all of Rootes' warrant of 3,000 acres and 51 acres of the Cope warrant. Forty-nine acres of the Cope warrant was never used.

These surveys, 1650, 1765 and 1775, were made in May, 1788, and General Washington had the surveys patented to him from the State of Virginia, December 1, 1790, and these patents appear of record in the land office at Richmond, Virginia.

In 1798, General Washington heard that his title would be attacked by a second location and on July 30, he wrote to Col. Richard C. Anderson, at Louisville, Ky., Surveyor of the District, stating his title and that he would defend it to the last. Had he survived ten years longer he would have had title to these lands complete.

Col. Anderson replied on September 5, 1798, that he regarded General Washington's title good, and that no attempts had been made to overlocate it, but if any were, he would notify him.

The attempt to seize General Washington's 3,051 acres of land in Clermont and Hamilton Counties, Ohio, was not made until February, 1806, and Col. Anderson at once notified General Washington's Executors, as he had promised the General he would do.

It was another case of Ahab vs. Naboth, 1 Kings 21, in which Joseph Kerr, then a Deputy Surveyor and afterwards a United

States Senator from Ohio took the part of Ahab. Kerr had to make some kind of claim to justify his appropriation of the Washington land. He claimed that they were located on a Resolution warrant and therefore not good. It stood to reason, however, that when the State of Virginia reserved the right to issue the warrants to take these lands, it could do it under a general law, a private or special law, or a joint resolution.

Washington's 3,000 acre warrant was issued under the authority of a joint resolution of the Virginia legislature. Kerr's real reason for making the location was that he wanted to purchase the Neville Surveys of 839 and 1,066⅔ acres respectively and which he did in 1811.

The Executors of General Washington at once sent to Richmond, Virginia, and obtained the surveys, warrants and grants and on March 14, 1806, applied to Congress to make their title to these lands good, as against Kerr's claims, who at that time had only made entries.

The petition was treated with the greatest courtesy by the Ninth Congress and promptly referred but not disposed of, when at the close of the short session, two acts in response to it, were passed. The act of March 2, 1807, declared all second locations thereafter made, absolutely void. This act was renewed eleven times and kept in force thereafter till the District closed. This act was passed as a rebuke to the conduct of Kerr in making his second location upon Washington's lands and to prevent any similar case happening thereafter.

The act did prevent any similar second locations. The act of March 3, 1807, was passed with the knowledge on the part of Congress that Kerr had surveyed out his entries in May, 1806, and had fully determined to take Washington's lands unless prevented by the United States. That act forever silenced the claim that Resolution warrants issued by Virginia were not of equal force of those issued under the authority of General Laws. That act approved all resolution warrants previously issued by Virginia and where surveys had been made under them, as in this case, validated such surveys.

The act of March 3, 1803, viewed in the light of the pre-

vious history relating to it, makes it in effect a pledge on the part of the United States to the Executors of General Washington,

First, that it would refuse to further recognize the second locations made by Joseph Kerr, and would compel him to withdraw his warrants and relocate the same.

Second, that if the Executors of General Washington returned their surveys to the General Land Office, on or before March 23, 1812, patents would issue to them on these surveys. This act was equivalent to a Government bond issued to the Executors of General Washington promising to give them this particular land or its equivalent, because it was enacted in their petition and intended to comply with the same, i. e., that they should have the title to this particular land.

On April 30, 1807, the United States, in direct violation of its pledge, contained in the act of March 3, 1807, to give the Executors of General Washington to March 23, 1812, to return their surveys and obtain patents, patented General Washington's two surveys 1,650, for 839 acres and 1,765 for 1,235 acres to John Neville's heirs and on January 8, 1808, patented Gen. Washington's remaining survey 1,775, for 977 acres, to Henry Massie and before the five years were up these lands were in the hands of innocent purchasers.

The patentees of these lands sold and disposed of them and the Washington estate was wholly deprived of them. The documents on file as to surveys 4,847, 4,448 and 4,862, which are the numbers of the surveys made by Kerr, the two first made for John Neville's heirs and the last for Henry Massie, clearly indicate to the expert that the patents were procured by fraud, as they undoubtedly were and a fraud for which the United States was solely and wholly responsible.

The act of March 3, 1807, was a declaration of Trust on the part of the United States, made in response to the petition of the Executors of General Washington, to the effect that they held the title in trust for his Executors and would convey it to them on or before March 23, 1812, on their surveys being filed prior to that time.

On Dec. 5, 1907, the personal representative of General

Washington demanded the performance of this trust and the matter has not yet been acted on.

The method of dealing with a case like this was settled in the 22nd Congress. The Assignees of General Duncan McArthur had located 14,000 acres in 1810 and 1812, in the District, which lands the United States sold and conveyed to other parties.

An act was passed May 26, 1824, Vol. 4, p. 70, to satisfy the claims of the owners of these 14,000 acres. An investigation was had and reports made and the acts of May 26, 1830, Vol. 4, p. 405, and Feb. 12, 1831, Vol. 4, p. 440 were passed. These bills carried $85,565.46. The precedents expressed in these bills were carefully made. The subject matter was under investigation for six years.

The claims were attacked and contested, but on the final outcome, the reports in favor of the bills were without division and the bills were passed unanimously. The precedents of these bills have never been questioned, or changed.

Under them the Washington heirs are entitled to the value of their lands, without improvements, as of the date they presented their demand to Congress and with interest from that date till they are paid. This calls for $305,100 with interest from Dec. 5, 1907, till paid. The estate of General Washington is entitled to this relief beyond any question. There can be no two conclusions from the facts presented.

The United States received in gifts from General Washington $281,333.33. It then took his lands worth $305,100, without improvements. It has had out of his estate $586,433.33, $56,433.33 more than he left at the time of his death.

Can any one defend the action of the United States in taking General Washington's lands and using them to pay a part of its debts directly contrary to the last clause of the Fifth Amendment to the Constitution? If we place the lands at $30,500 at the time of the conversion, then the United States has had $311,923 from General Washington's estate, so that in either method of compensation, the United States in satisfying this debt would be simply paying back what it had already received and held on account of the Washington estate.

And yet it is said that the House wishes to postpone this

claim till after the Congressional election in 1910. The way to treat a debt is to pay it when presented and not to postpone it on the ground of political expediency, or any other grounds. The heirs are asking this payment of this claim because it is a debt. If it is not a debt, let Congress investigate it and demonstrate the fact. The heirs are willing to bear all the blame of presenting a false or unjust claim and if this debt should not be paid let Congress investigate and show why. The investigation will demonstrate that the United States, contrary to its own laws, contrary to its solemn pledges and promises, took these lands from the estate of General Washington, after he or his heirs had held them eighteen years, and after it had agreed to give him the title and gave them to second locators, who had no equities or claims to them whatever.

This claim is unique. Congress received from Virginia the fund to pay this debt. It has never paid it though it promised in an act of Congress to do so. It took Gen. Washington's lands after he and his heirs had held them eighteen years and gave them to others, contrary to its own pledges and promises and has never accounted to the Washington estate for its breach of trust.

The investigation will reveal the facts herein set forth and none others and a Congressional Committee or Congress itself should be as fully able to see the only conclusions which can be drawn, from the foregoing indisputable facts, as any reader of this Article can.

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March 15, 1910.

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